
OLR Bill Analysis

sSB 1035

AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES.

SUMMARY:

This bill (1) eliminates the death penalty as a sentencing option for a capital felony committed on or after the bill's effective date, thus leaving life imprisonment without the possibility of release as the penalty and (2) renames the crime of capital felony as murder with special circumstances.

It also makes a number of changes to apply the rules for capital felony crimes to murder with special circumstances, as necessary.

EFFECTIVE DATE: Upon passage. The provision renaming the crime of capital felony as murder with special circumstances applies to crimes committed on and after that date.

CRIME OF CAPITAL FELONY AND MURDER WITH SPECIAL CIRCUMSTANCES

The bill renames the crime of capital felony as murder with special circumstances. A person commits the crime of capital felony under current law, or murder with special circumstances under the bill, if he or she:

1. murders, while the victim was acting within the scope of his or her duties, a police officer, Division of Criminal Justice inspector, state marshal exercising statutory authority, judicial marshal performing duties, constable performing law enforcement duties, special policeman, conservation or special conservation officer appointed by the environmental protection commissioner, firefighter, or Department of Correction (DOC) employee or service provider acting within the scope of employment in a correctional facility (the perpetrator must be an inmate);

2. murders for pay or hires someone to murder;
3. murders and was previously convicted of intentional murder or murder while a felony was committed;
4. murders while sentenced to life imprisonment;
5. murders a kidnapped person and is the kidnapper;
6. murders while committing 1st degree sexual assault;
7. murders two or more people at the same time or in the course of a single transaction; or
8. murders a person under age 16.

BAIL

Under the Connecticut Constitution, a person is eligible for bail unless he or she is charged with a capital offense “where the proof is evident or the presumption great.” Because murder with special circumstances is not a capital offense, people charged with this crime would be eligible for bail under the constitution. The bill allows the court or a judge or judge trial referee issuing a bench warrant to arrest someone for murder with special circumstances to indicate that the person should not be released bail.

As with capital felonies under prior law, people convicted of murder with special circumstances are ineligible for post-conviction bail while awaiting sentencing or appealing their conviction.

RULES ON PROSECUTION AND RELEASE

The bill makes a number of technical and conforming changes to apply the rules for capital felony crimes to murder with special circumstances as necessary, such as:

1. requiring that biological evidence and records of evidence and judicial proceedings be preserved,
2. authorizing the court to allow the reading of a victim impact

statement in court before imposing the sentence,

3. allowing defendants accused of the crime to choose a jury or three-judge panel,
4. allowing them to challenge potential jurors,
5. requiring testimony of at least two witnesses or their equivalent for a conviction, and
6. prohibiting medical or compassionate parole release.

BACKGROUND

Death Penalty Sentencing Hearing

A person convicted of a capital felony must be sentenced to either the death penalty or life imprisonment without the possibility of release. The jury, or the court if the defendant chooses, weighs mitigating and aggravating factors in a separate sentencing hearing to decide whether to impose the death penalty. The jury or court cannot impose the death penalty and must sentence the person to life imprisonment without the possibility of release if mitigating factors outweigh, or are of equal weight to, the aggravating factors, or if any of five automatic bars to the death penalty exist. Otherwise, the person must be sentenced to death.

Aggravating Factors. By law, the only aggravating factors that the jury or court can consider are that the defendant:

1. committed the offense while committing or attempting to commit a felony, or while fleeing from the commission of or attempt to commit a felony, and had previously been convicted of the same felony;
2. had been convicted of at least two state or federal offenses prior to the offense, each of which was committed on different occasions, involved serious bodily injury, and had a maximum penalty of at least one year imprisonment;
3. committed the offense knowingly creating a risk of death to

another person in addition to the victim of the offense;

4. committed the offense in an especially heinous, cruel, or depraved manner;
5. procured someone else to commit the offense by paying or promising to pay anything of pecuniary value;
6. committed the offense in return for payment or the expectation of payment;
7. committed the offense with an assault weapon; or
8. murdered one of the following people, while the victim was acting within the scope of duty, in order to (a) avoid arrest for or prevent detection of a criminal act, (b) hamper or prevent the victim from carrying out an act within the scope of official duties, or (c) retaliate against the victim for performing official duties: a police officer, Division of Criminal Justice inspector, state marshal exercising statutory authority, judicial marshal performing duties, constable performing law enforcement duties, special policeman, conservation or special conservation officer appointed by the environmental protection commissioner, firefighter, or DOC employee or service provider acting within the scope of employment in a correctional facility (the perpetrator must be an inmate).

Mitigating Factors. The jury or court must determine if a particular factor concerning the defendant's character, background, or history or the nature and circumstances of the crime is established by the evidence and whether that factor is mitigating, considering all the facts and circumstances of the case. Mitigating factors are not defenses or excuses for the capital felony of which the defendant was convicted, but are factors that, in fairness and mercy, tend either to extenuate or reduce the defendant's blame for the offense or otherwise provide a reason for a sentence less than death.

Bars to the Death Penalty

By law, five factors automatically bar the death penalty. A defendant cannot receive the death penalty if the court or jury determines that he or she:

1. was under age 18 at the time of the crime;
2. was mentally retarded at the time of the crime;
3. had a mental capacity or ability to conform his or her conduct to the requirements of law that was significantly impaired at the time of the crime (but not so impaired as to constitute a defense);
4. was guilty of a capital felony only as an accessory and had relatively minor participation; and
5. could not reasonably have foreseen that the conduct, in the course of committing the crime he or she was convicted of, would cause someone's death.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 27 Nay 17 (04/12/2011)